THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 24119 of 1998

Oral order:

The petitioner-APSRTC, represented by its Depot Manager, Zaheerabad, has filed this writ petition assailing the award dated 02.04.1997, passed by the Labour Court, Hyderabad, in I.D. No. 28 of 1996, directing the petitioner to reinstate the 1st respondent-workman into service with all attendant benefits, such as continuity of service etc. and with 50% backwages.

The 1st respondent-workman was working as Casual Conductor. While so, on 17.08.1993, while he was conducting the bus on the route, a surprise check was exercise by the checking officials, who found that the 1st respondent-workman even though collected Rs.5.75 each from two passengers, issued them tickets worth Rs. 4.25 and Rs.0.50 each, and pocketed Rs.2/-. As the 1st respondent-workman misappropriated Rs.2/- by issuing less denomination tickets after collecting the correct fare from two passengers, the petitioner framed charges against the 1st respondent-workman, and initiated enquiry thereinto by appointing an Enquiry Officer. The 1st respondent-workman participated in the enquiry. The Enquiry Officer submitted his report holding that the charges leveled against the 1st respondent-workman stood proved in the enquiry. The 1st respondent-workman, was furnished with the enquiry report, and was called upon to submit his explanation. The 1st respondent-workman submitted his explanation, but dis-satisfied with the same, the petitioner, who is the disciplinary authority, vide orders

dated 10.12.1993, removed the 1st respondent-workman from service. Aggrieved by the removal order passed by the petitioner, the 1st respondent-workman preferred appeal to the Divisional Manager, who vide orders dated 11.08.1994, dismissed the same confirming the order of the disciplinary authority. Assailing the removal order, passed by the petitioner, as confirmed by the appellate authority, the 1st respondent-workman raised an industrial dispute in I.D. No. 28 of 1996 before the Labour Court. The petitioner contested the same. The Labour Court, upon considering the rival contentions, the material and the evidence placed before it, passed the impugned award, setting aside the removal order of the 1st respondent-workman, and directed the petitioner to reinstate the 1st respondent-workman into service with all attendant benefits etc. and with 50% backwages. Hence, this writ petition by the petitioner-APSRTC.

Heard the learned Standing Counsel for the petitioner-APSRTC. On the last occasion i.e. on 29.08.2007, none appeared for the 1st respondent-workman, and therefore, it was directed to be listed for orders today. Today, even though the matter is listed under the caption “for orders”, and despite passing over the matter to 2.15 p.m., neither the 1st respondent-workman nor his counsel is present nor is there any representation made on their behalf. Hence, the matter is being disposed of based on the material available on record.

The 1st respondent-workman, as is evident from the award, did not seriously challenge the procedural aspects and validity of the departmental enquiry, and therefore, the departmental enquiry was held valid. The charge of cash and ticket irregularity is alleged against the 1st respondent-workman. The petitioner is alleged to have

issued collected Rs. 5.75 ps. each from two passengers towards fare, but issued them tickets worth Rs. 4.75 ps. (Two tickets each of Rs.4.25 ps. and Re. 0.50 ps.). The fact that the

1st respondent-workman misappropriated Re. 1/- each from the two passengers, stood proved in the enquiry. Based on the enquiry report, which held that the charges against the 1st respondent-workman are proved, the disciplinary authority removed the

1st respondent-workman from service, which removal order was even confirmed in appeal. Even though the Labour Court, in the I.D. filed by the 1st respondent-workman, concurred with the findings of the enquiry officer in the enquiry report, yet held that the punishment of removal from service is disproportionate to the proved charges.

There is no doubt under Section 11-A of the Industrial Disputes Act, 1947, the Tribunal has the power to modify the punishment imposed by the authorities from that of removal/dismissal/termination to that of a lesser punishment, but such modification should be based on proper and convincing reasons. In the instant case, though the Tribunal had upheld the validity of the departmental enquiry and further held that the charges leveled against the 1st respondent are proved, it failed to assign any reasons as to how the punishment imposed by the authorities on the 1st respondent is disproportionate to the proved misconduct. Since the award passed by the Labour Court, is silent on how the punishment imposed by the authorities on the 1st respondent is disproportionate to the proved misconduct, I am of the considered opinion that matter has to be remanded to the Labour Court, for consideration of the question whether the punishment imposed by the authorities on the 1st respondent is disproportionate to the proved misconduct and is shocking to the conscience of the Court,

and for passing of a reasoned order.

In the above view of the matter, the award passed by the Labour Court cannot be sustained, and the same is accordingly set aside. The writ petition is allowed. The matter is remanded to the Labour Court, for adjudication of the question whether the punishment imposed by the authorities on the 1st respondent is disproportionate to the proved misconduct and is shocking to the conscience of the Court, and pass a reasoned order. No costs.

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N.V. RAMANA, J.

Dated: 12th September, 2007.
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